

STATE BAR OF MICHIGAN  
CIVIL PROCEDURE AND COURTS COMMITTEE

**Comment on Proposed  
Amendment to MCR 2.502**

Recommendation

The proposed amendment to MCR 2.502 is intended to permit a party to seek dismissal of a case for lack of progress. The Civil Procedure and Courts Committee recommends against the proposal.

Reasons for Recommendation

The proposal is to modify MCR 2.502(A)(1) as follows:

On motion of a party or on its own initiative. ~~The~~ the court may notify the parties in those actions in which no steps or proceedings appear to have been taken within 91 days that the action will be dismissed for lack of progress unless the parties show that progress is in fact being made or that the failure to prosecute is not due to the fault or lack of reasonable diligence of the party seeking affirmative relief.

The committee believes that the amendment is unnecessary because a scheduling order generally governs the progress of a case, the rules presently provide sufficient authority for a party to seek dismissal in an appropriate case, and the amendment would invite motions that would not materially advance proper case management.

MCR 2.401(B)(2)(a) requires the court to enter a scheduling order in every case. The no progress rule does not apply to cases where "a scheduling order has been entered . . . and the times for completion of the scheduled events have not expired" or in a case that is "set for a conference, an alternative dispute resolution process, hearing, or trial." MCR 2.502(A)(2). Thus MCR 2.502(A)(1) has only limited application to begin with. When the court has entered a scheduling order, it is unnecessary and inappropriate for it to otherwise monitor progress of a case by giving a notice of a potential no progress dismissal. In the rare case where the court has not entered a scheduling order, the proper course of action is for a party to request a pretrial conference to schedule the case. MCR 2.401(A), (C)(1). Given that, there is no reason for expanding MCR 2.502 (A) to allow a party to seek a no progress dismissal.

In any case, if there is any reason for dismissal because of a party's failure to properly proceed with a case, the rules already provide means for a party to seek relief. MCR 2.313 provides a remedy for failure to cooperate in discovery. MCR 2.504(B)(1) provides for a motion to dismiss if a party fails to comply with the court rules or a court order. This includes the situation where a party has not taken action to move a case toward disposition in violation of a court rule or order. *North v Dept of Mental Health*, 427 Mich 659, 668-669, 397 NW2d 793 (1986) (Levin, J, concurring). These and other rules provide sufficient authority for a party to seek dismissal when it is warranted. MCR 2.502(A)(1) should not be expanded to invite additional motions.

The committee also notes that, although the staff comment states that the proposed amendment “would allow a party to seek the dismissal of a case for lack of progress,” the proposed language does not accomplish that. Rather, it only authorizes a party to file a motion asking the court to give notice of a proposed no progress dismissal.

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